

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 18, 2010

David R. Schanker
Clerk of Court of Appeals

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Appeal No. 2009AP567-CR

Cir. Ct. No. 2007CF491

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MIGUEL E. MARINEZ, JR.,

DEFENDANT-APPELLANT.

APPEAL from judgment of the circuit court for Jefferson County:
RANDY R. KOSCHNICK, Judge. *Reversed.*

Before Dykman, P.J., Lundsten and Higginbotham, JJ.

¶1 DYKMAN, P.J. Miguel Marinez appeals from a judgment of conviction for first-degree sexual assault of a child, contrary to WIS. STAT.

§ 948.02(1) (2007-08).¹ Marinez argues that the trial court erroneously exercised its discretion in admitting evidence that Marinez previously burned the victim's hands, and that the State then introduced testimony and arguments about the burning beyond what the court allowed. The State contends that the court properly exercised its discretion in allowing the hand burning evidence as "other acts" evidence under WIS. STAT. § 904.04(2),² that Marinez forfeited his argument that the State violated the court's order by failing to object at those points of the trial, and that in any event, the State stayed within the confines of the court's order in introducing evidence and argument. We conclude that the hand burning evidence was not admissible, and therefore reverse.

Background

¶2 The following undisputed facts are taken from the trial record. In November 2007, the State charged Marinez with one count of sexual assault of a child contrary to WIS. STAT. § 948.02(1). The criminal complaint alleged that Marinez had sexual contact with his step-daughter, M.M.L., sometime between October and December of 2006, when M.M.L. was four years old. Marinez pled not guilty to the charge, and the case was scheduled for trial.

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² WISCONSIN STAT. § 904.04(2) provides, in pertinent part:

[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

¶3 Prior to trial, the State moved the court for an order permitting it to introduce evidence that Marinez previously burned M.M.L.'s hands. The State sought to introduce M.M.L.'s statements about the hand burning in the videotaped forensic interview of M.M.L., and statements by the detective who investigated the previous hand burning case against Marinez. At the motions hearing, the State played the full videotaped interview for the court. The State argued that it needed to play the videotaped interview of M.M.L. in its entirety for the jury, which included M.M.L.'s statements about Marinez sexually assaulting her and burning her hands, to fully establish its case. The State argued that the hand burning evidence, as set forth in M.M.L.'s interview, was necessary to establish identity, timing, and venue, and to support M.M.L.'s credibility as to the sexual assault.

¶4 Marinez objected to the portions of the videotape containing M.M.L.'s references to Marinez burning her hands. Marinez's counsel argued that Marinez was willing to stipulate to the timeframe alleged in the information, and that the portion of the video showing M.M.L. identifying the man who assaulted her as the man married to her mother, whom she knew as "Mikey Miguel," as well as corroboration by the investigating detective, was sufficient to establish identity. He also argued that the hand burning evidence did not help establish timing or venue, that M.M.L.'s statements and the statements of the investigating detective were clear on those points, and that the evidence did not establish M.M.L.'s credibility as to the claim of sexual assault. Finally, he argued that any evidence as to Marinez burning M.M.L.'s hands was unduly prejudicial. The court recognized that the State rejected the defendant's offer to stipulate as to timing, but accepted the parties' stipulation as to Marinez not having any contact with M.M.L. after December 17, 2006, when he was arrested for burning M.M.L.'s hands.

¶5 The court ruled that the hand burning evidence was offered for a proper purpose under WIS. STAT. § 904.04(2) for establishing Martinez’s identity as the person who assaulted M.M.L., and for establishing context. The court explained that “[c]ontext includes the time frame, including the date of the alleged violation, the location to establish venue and the corroboration effect of the child’s testimony, as well as to provide an overall complete explanation of the case.” The trial court reasoned that because of M.M.L.’s young age, she would have difficulty specifying the date, and her references to the hand burning were necessary to establish when and where the touching occurred. It also explained that the hand burning evidence went to M.M.L.’s credibility,

because the hand burning incident has now been established, I think beyond dispute, that the defendant has been convicted of perpetrating that act of abuse against [M.M.L.].... And that does provide additional credibility for [M.M.L.]’s story, if the jury believes her testimony overall. It doesn’t necessarily establish, to a certainty, that she is telling the truth, but it is certainly relevant to her credibility, and that’s something that the jury, obviously, has to deal with.

The court then explained the hand burning evidence’s admissibility to show identity, explaining:

The alleged victim refers to the defendant as “Mikey” or “Mikey-Miguel,” and when she is talking to the child interviewer in the videotape interview, she is describing Mikey as being the person who burned her hands, and she clearly describes the person who burned her hands as the same person who touched her private spot, all within the context of a family residential setting. And so it is probative of identity. It identifies the defendant as the same perpetrator of both abusive acts.

A jury otherwise might have difficulty determining, even if they believe the girl was sexually assaulted, whether this defendant is the one who assaulted her. And so the linkage between the hand burning and the sexual assault claim is that [M.M.L.] clearly is attempting to tell us that the defendant is the same person who committed both of

those acts. And so it's admissible for the identity purpose, as well.

The court then determined that the evidence was also relevant and not unduly prejudicial.

¶6 Following trial, the jury returned a guilty verdict, and the court entered a judgment of conviction. Marinez appeals.

Standard of Review

¶7 We review a trial court's decision as to whether to admit other acts evidence for whether the trial court erroneously exercised its discretion. *State v. Hunt*, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771. This analysis focuses on whether the trial court "examined the relevant facts, applied a proper standard of law, used a demonstrated rational process, and reached a conclusion that a reasonable judge could reach." *Id.* Additionally, we "independently ... review the record to determine whether it provides an appropriate basis for the [trial] court's decision." *Id.* Whether the admission of evidence meets statutory requirements is a question of law that we review de novo. *See State v. Doss*, 2008 WI 93, ¶20, 312 Wis. 2d 570, 754 N.W.2d 150.

Discussion

¶8 Marinez argues first that the trial court erred in admitting the hand burning evidence as permissible other acts evidence under WIS. STAT. § 904.04(2). In addition, he argues that the State violated the court's order allowing the hand burning evidence for the limited purpose of establishing identity and context. We agree that the trial court erroneously exercised its discretion in allowing the hand

burning evidence under § 904.04(2), and therefore need not reach the issue of whether the State exceeded the limits the court placed on the evidence.³

¶9 In *State v. Sullivan*, 216 Wis. 2d 768, 576 N.W.2d 30 (1998), the supreme court explained the three-part test courts must follow before admitting other acts evidence under WIS. STAT. § 904.04(2). The three steps are:

(1) Is the other acts evidence offered for an acceptable purpose under WIS. STAT. § (Rule) 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident?

(2) Is the other acts evidence relevant, considering the two facets of relevance set forth in WIS. STAT. § (Rule) 904.01? The first consideration in assessing relevance is whether the other acts evidence relates to a fact or proposition that is of consequence to the determination of the action. The second consideration in assessing relevance is whether the evidence has probative value, that is, whether the other acts evidence has a tendency to make the consequential fact or proposition more probable or less probable than it would be without the evidence.

(3) Is the probative value of the other acts evidence substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence?

Sullivan, 216 Wis. 2d at 772-73 (footnote omitted). The court also explained the reason that “other acts” evidence is generally excluded:

³ The State argues that Marinez forfeited this argument by failing to object at trial when he believed that the State violated the court’s order limiting the use of the hand burning evidence. See *State v. Ndina*, 2009 WI 21, ¶¶29-31, 315 Wis. 2d 653, 761 N.W.2d 612 (although parties and courts sometimes use “waiver” and “forfeiture” interchangeably, a party’s failure to preserve an argument through objection at trial is more appropriately termed a “forfeiture”). Because we determine that the trial court erroneously exercised its discretion in admitting the hand burning evidence as permissible other acts evidence, we do not reach the issue of whether Marinez properly preserved the question of whether the State exceeded the order allowing that evidence.

(1) the overstrong tendency to believe the defendant guilty of the charge merely because he is a person likely to do such acts; (2) the tendency to condemn not because he is believed guilty of the present charge but because he has escaped punishment from other offenses; (3) the injustice of attacking one who is not prepared to demonstrate the attacking evidence is fabricated; and (4) the confusion of issues which might result from bringing in evidence of other crimes.

Id. at 782-83.

¶10 We begin with the first step in analyzing whether the hand burning evidence was properly admitted as “other acts” evidence: whether it was offered for an acceptable purpose under WIS. STAT. § 904.04(2), “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” The State offered the hand burning evidence to establish identity, timing, and venue; to support M.M.L.’s credibility; and to fully establish its case. In admitting the hand burning evidence, the trial court grouped the State’s arguments under the headings “identity” and “context,” and found the evidence was offered for a proper purpose under both categories. On appeal, the State argues only that the hand burning evidence was offered for the proper purpose of establishing the “context” of the sexual assault, and concedes that “identity” does not apply under the circumstances of this case.⁴ See *State v. Hereford*, 195 Wis. 2d 1054, 1067, 537 N.W.2d 62 (Ct. App. 1995) (other acts evidence is properly offered to establish identity where it “relate[s] the type of unique actions by [the defendant] that would carry his imprint and therefore serve to identify him

⁴ After arguing that the hand burning evidence was offered for a proper purpose as establishing context under step one of the *Sullivan* test, the State argues that the hand burning evidence was relevant under step two because it was probative of identity, timing, and venue. Because we conclude that the hand burning evidence was not offered for a proper purpose, we do not reach the second and third steps of the *Sullivan* test.

as the person who” committed the charged crime). Although we agree with the State that other acts evidence may, under certain circumstances, be admitted to fully establish the State’s case and to bolster victim credibility,⁵ we conclude that those facts are not present here.

¶11 In *State v. Hunt*, 2003 WI 81, ¶58, 263 Wis. 2d 1, 666 N.W.2d 771, the supreme court explained that in some cases, “[o]ther-acts evidence is permissible to show the context of the crime and to provide a complete explanation of the case.” For example, in *Hunt*, “[t]he context of other-acts evidence ... provided insight as to the unique circumstances in the Hunt household,” which were necessary to fully establish why the victims claimed the abuse occurred and then recanted their statements. *Id.*, ¶¶58-59.

¶12 Hunt was charged with six criminal counts arising from information provided by members of the Hunt household, which included Hunt, his wife, another woman with whom he had a marital-type relationship, and ten minor children. *Id.*, ¶¶8-13. The family informed police that “Hunt frequently smoked crack cocaine and would force the entire family into the upstairs portion of the home, which was without running water, for the duration of his drug use.” The family also revealed that while Hunt was using drugs, he would force the woman or her minor daughter to have intercourse with him. *Id.*, ¶¶9, 12. DNA testing established that Hunt was the father of the minor daughter’s son. *Id.*, ¶9.

⁵ While context and credibility are not listed as exceptions under WIS. STAT. § 904.04(2), the supreme court has explained that the list under § 904.04(2) is not exhaustive, and that context and credibility are proper purposes under certain circumstances. See *State v. Hunt*, 2003 WI 81, ¶¶54, 58-59, 263 Wis. 2d 1, 666 N.W.2d 771. For this reason, we reject Marinez’s argument that “credibility” is not a proper purpose under § 904.04(2).

¶13 However, “[a]fter the charges were filed the victims and witnesses recanted their statements to police officers and refused further cooperation with the prosecution.” *Id.*, ¶14. The trial court therefore allowed the State to introduce other acts evidence under WIS. STAT. § 904.04(2), establishing that Hunt had previously physically and sexually abused his wife, the other woman living with him, and the woman’s minor daughter. *Id.*, ¶¶15-21. The supreme court determined that the evidence was offered for a proper purpose under § 904.04(2), to establish context and “to show the victims’ state of mind, to corroborate information provided to the police, and to establish the credibility of victims and witnesses in light of their recantations,” among other proper purposes. *Id.*, ¶¶58-61.

¶14 In *Hunt*, then, the other acts evidence had a proper purpose under WIS. STAT. § 904.04(2), to establish the context for the victims and witnesses making allegations of abuse and then recanting them. This was necessary for the jury to “understand[] ... the abuse that took place in the home, and the authority and control Hunt possessed over” the members of the household. *Id.*, ¶58.

¶15 Here, in contrast, the hand burning evidence did not explain M.M.L.’s behavior in reporting the incident. The State asserts generally that M.M.L.’s testimony is more credible because M.M.L. previously reported the hand burning and Marinez was then convicted of that offense. But there are two problems with this rationale. First, no evidence was introduced to the jury establishing that Marinez was, in fact, convicted of burning M.M.L.’s hands, thus establishing her credibility in reporting abuse by Marinez. Additionally, we decline to adopt the State’s reasoning that a child’s credible report of bad behavior against a defendant is admissible as other acts evidence to support the child’s credibility in reporting unrelated charged behavior. The State does not support

this proposition with authority or reasoned argument.⁶ To the extent it relies on *Hunt*, that reliance is misplaced. In *Hunt*, the challenged evidence helped explain why the victims would have falsely recanted. That is, the evidence directly explained why the victims had a motive to falsely recant. Here, even assuming that it was established that M.M.L. was truthful about the hand burning incident, that fact does not help establish that she was truthful about the unrelated assault allegation.⁷

⁶ The State explains that it has limited its argument as to proper purpose because Marinez has not challenged the purposes for which the State offered the hand-burning evidence, but this is not technically true. Marinez specifically argues in his brief-in-chief that the hand burning evidence was not offered for a proper purpose because identity and context were not at issue in the trial. In his reply brief, Marinez argues that “credibility” is not a proper purpose for offering other acts evidence, an argument we reject in fn. 5, *supra*. Regardless, Marinez has clearly appealed from his conviction on the basis that the trial court improperly admitted the hand burning evidence as other acts evidence under WIS. STAT. § 904.04(2), and thus the test for admitting other acts evidence is clearly at issue, even if Marinez was less than precise in detailing his argument.

⁷ The State cites generally to other cases that it claims support its argument that the hand burning evidence was offered for a proper purpose, each of which is distinguishable. For example, in *State v. Patricia A.M.*, 176 Wis. 2d 542, 549-54, 500 N.W.2d 289 (1993), the supreme court held that the victim’s past reliable statements that his father sexually abused him were admissible in the sexual assault trial against his mother, because they made his testimony more credible and his statement that his father was present while his mother sexually assaulted him and did not interfere, more believable. The court concluded that the evidence was admissible because it was relevant and not unduly prejudicial, and that the evidence was not excluded “other acts” evidence because it was not an act of the mother. *Id.* The other cases the State cites concern other acts evidence admitted for a purpose other than credibility, on facts not present here. See *State v. Hereford*, 195 Wis. 2d 1054, 1067-69, 537 N.W.2d 62 (Ct. App. 1995) (testimony that defendant had gun in his car weeks before shooting offered for proper purpose to clarify defendant’s ambiguous statement on the way to his car that “I am going to get my shit,” and to establish intent); *State v. Bergeron*, 162 Wis. 2d 521, 530-31, 470 N.W.2d 322 (Ct. App. 1991) (defendant’s use of alias offered for proper purpose of establishing intent and to establish background facts of the case, where victims knew him only by his alias); *State v. Shillcutt*, 116 Wis. 2d 227, 234-37 & n.6, 341 N.W.2d 716 (Ct. App. 1983) (evidence of defendant’s prior abuse toward and solicitation of witness to work for him as a prostitute offered for proper purpose to establish relationship between defendant and witness and to fully establish the context of the case).

¶16 The State also argues generally that the hand burning evidence was necessary to fully establish its case. It argues that the evidence was admissible even without the “greater latitude rule” providing more liberal standards for admitting evidence in sexual assault cases, but that the rule provides another basis for the trial court to admit the evidence. *See State v. Davidson*, 2000 WI 91, ¶36, 236 Wis. 2d 537, 613 Wis. 2d 606 (explaining Wisconsin’s “longstanding principle that in sexual assault cases, particularly cases that involve sexual assault of a child, courts permit a greater latitude of proof as to other like occurrences”). The State argues that it was necessary for it to play the entire video for the jury to fully present its case, and that omitting M.M.L.’s statements about the hand burning would have “fundamentally chang[ed] the nature and power of the videotaped interview.”

¶17 In the videotaped forensic interview, M.M.L. detailed the sexual assault and the fact that her hands were burned, and gave the following statements that established it was Marinez who burned her hands:

A. My mommy was, um, the one who was at work and she letted Mikey—she letted Mikey burn my hands.

Q. Okay. So mommy was at work and she let Mikey burn your hands. Okay....

....

A. Um, he turned on hot water.

Q. Okay.

A. He didn’t know that.

....

A. I wish—I hope Mikey is in jail right now for doing what he did to my hands.

Q. You hope that he or you know? I didn't hear what you said.

A. I hope that he is in jail.

Q. You hope that he is.

A. Uh-huh. And I hope my mother marries a different person[.]

Q. You hope she marries a different person.

A. Yep.

Q. Okay. How come?

A. Because of what Mikey did to my hands. I had to go to the hospital. I had to go to the doctor.

We disagree with the State that these statements were necessary to fully establish its sexual assault case against Martinez. The statements were not, as the State contends, “inextricably intertwined with [M.M.L.’s] statements about the sexual assault.” Rather, the statements were easily separated from the sexual assault allegations, and the two events were presented as distinct incidents. Even assuming the greater latitude rule applies in this context, that does not overcome the fact that the evidence was not offered for a proper purpose. *See id.*, ¶52 (“The greater latitude standard does not relieve a court of the duty to ensure that the other acts evidence is offered for a proper purpose under [WIS. STAT. §] 904.04(2).” (citation omitted)).

¶18 Having determined that the trial court erred in admitting the hand burning evidence, we turn to whether that error was harmless. *See Sullivan*, 216 Wis. 2d at 792. “The test for harmless error is whether there is a reasonable possibility that the error contributed to the conviction.” *Id.* Thus, “[t]he conviction must be reversed unless the court is certain the error did not influence the jury.” *Id.* The burden is on the State, as the beneficiary of the error, to

establish that the error was harmless. *Id.* at 792-93. We conclude that the State has not met that burden here.

¶19 The State referenced the hand burning evidence in its opening statement, as follows:

There came a time at the end of 2006, in December of 2006, that [M.M.L.]’s hands were burned by the defendant. [M.M.L.] ended up seeing the doctor and going to the hospital, as you will hear her say. And that the defendant did not have access or opportunity to further abuse [M.M.L.] after that and that [M.M.L.] and the defendant never lived in the same house after that.

Later in its opening statement, the State again referenced the hand burning:

During the interview, [M.M.L.] also, as kids do say the darndest things, spontaneously and without any prompting said that—she said, I hope that Mikey’s in jail because of what he did to my hands. She also said, I hope that my mommy marries somebody different because of what Mikey did to my hands.

Out of the mouths of babes you will hear the testimony of [M.M.L.] and you will hear the unvarnished, no spin, no euphemisms, tell it like it is straight talk of a child who has experienced being physically and sexually abused by the defendant.

¶20 As part of the State’s presentation of its case, it played the videotaped interview of [M.M.L.] for the jury in its entirety, including the above statements M.M.L. made about Marinez burning her hands.⁸ The State also

⁸ The videotaped interview also contained other references to the fact that M.M.L.’s hands were burned, without specific reference to the fact that it was Marinez who burned them. The videotape contained the following references to the hand burning:

Q. Okay.... And who do you live with[?]

A. My daddy. My mommy was, um, the one who was at work and she letted Mikey—she letted Mikey burn my hands.

(continued)

Q. Okay. So mommy was at work and she let Mikey burn your hands. Okay....

....

Q. Okay. You said something about hurting your hands.

A. Um, he turned on hot water.

Q. Okay.

A. He didn't know that.

Q. Okay. Did the touching on your private area happen before your hands were hurt or after your hands were hurt, or both?

A. I think it was—it was a different time.

Q. It was a different time?

A. Yeah.

Q. What happened first, the touching on your private area or you getting your hands hurt?

A. I don't know which one was first or last. I don't know.

....

A. I wish—I hope Mikey is in jail right now for doing what he did to my hands.

Q. You hope that he or you know? I didn't hear what you said.

A. I hope that he is in jail.

Q. You hope that he is.

A. Uh-huh. And I hope my mother marries a different person[.]

Q. You hope she marries a different person.

A. Yep.

Q. Okay. How come?

A. Because of what Mikey did to my hands. I had to go to the hospital. I had to go to the doctor.

(continued)

questioned the investigating detective as to whether his investigation revealed that it had been Marinez who burned M.M.L.'s hands, which the detective confirmed.

¶21 In its closing argument, the State references the hand burning as follows:

Do you remember how [M.M.L.] described the fact that the defendant had burned her hands? She first said: My mommy letted, my mommy letted Mikey burn my hands. That's how she felt....

....

... She was also able to provide sufficient detail that was corroborated regarding her hands being burned. She testified that Mikey was the one who did it.

....

Certainly after someone has burned your hands serious enough for you to have to get transferred from the ER to the UW Hospital and to stay there, that you might not feel safe at that point [to report prior sexual abuse]....

¶22 In the defense's closing argument, counsel emphasized the difference in M.M.L.'s detailing the hand burning and her vague description of the sexual contact. In rebuttal, the State said:

Q. You had to go to the doctor.

A. The doctor that I went to, the doctor that I went to, my daddy is going to be working there.

Q. Oh. Did you see Mikey again after your hands were hurt?

A. No.

Q. No you didn't see him again after—

A. No.

Q. Your hands were hurt.

Let's turn to what the defense argues: Look at how different [M.M.L.] acted between talking about the burning of her hands and her private area being violated. Well, what would you expect? I mean she was—she had serious burns and she was in two different hospitals. That, of course, is going to have a much greater impact on you when you are four and you don't even necessarily have an appreciation for just how private that private area is. Right.

....

We know from the evidence that the defendant is responsible for burning [M.M.L.]'s hands. And that wasn't to distract you, but when the child is believable and credible in letting you know what he did, when he perpetrated that kind of abuse on her, the facts and circumstances tell you that she has the same credibility in describing the other abuse he did.

¶23 Thus, the State made repeated references to the fact that Marinez burned M.M.L.'s hands, that M.M.L. was angry with Marinez and her mother after that incident, and that M.M.L. should be deemed more credible based on having reliably reported who burned her hands. As the trial court and the parties agreed, this evidence was likely to influence the jury. It would be difficult to conceive a juror who would not be inclined to believe that a man who would burn the hands of a child is the same sort of man who would sexually abuse a child.

¶24 To determine whether the court's error in admitting the hand burning evidence was harmless, we weigh the strength of the State's case against the erroneously admitted evidence. See *State v. Ziebart*, 2003 WI App 258, ¶26, 268 Wis. 2d 468, 673 N.W.2d 369. The State's evidence consisted of M.M.L.'s videotaped interview stating that Marinez repeatedly touched her vaginal area. M.M.L. stated that while her mother was at work, Marinez instructed her to take off her clothes and shoes and lie down on Marinez and M.M.L.'s mother's bed, and then he touched her "private area." The State also introduced the testimony of the forensic interviewer, who testified that there is a wide range in the way

children report sexual abuse and her experience interviewing children. She testified that M.M.L. indicated Marinez touched her on her vaginal area. The State also introduced the testimony of M.M.L.'s mother, who provided background information about the family's living and sleeping arrangements consistent with M.M.L.'s testimony. Finally, the State introduced the testimony of the detective who investigated the hand burning case and this case. The detective testified that on December 27, 2006, he went to the hospital where M.M.L. was being treated for the burns on her hands, that in connection with the sexual assault investigation, he accompanied M.M.L. to Safe Harbor in Madison, and that after December 27, 2006, Marinez would not have been able to have any contact with M.M.L.

¶25 This is a close case. The State's case included a videotaped statement by M.M.L. detailing the abuse, and supporting testimony by an experienced forensic interviewer. But the case ultimately amounted to M.M.L.'s claim the abuse occurred versus Marinez's denial. There was no physical evidence or corroborating witnesses, and M.M.L. did not provide any particular details that she would only know if the abuse had occurred.⁹ In light of the State's use of the hand burning evidence, it is difficult for us to conclude that there is not a reasonable possibility that the hand burning evidence contributed to Marinez's conviction by influencing the jury's decision. Accordingly, we reverse.

⁹ This is not to disparage the strength of a child's claim of sexual abuse without more, or to suggest that such additional evidence is necessary to support a conviction. It is merely a factual summary of the State's evidence as weighed against the improperly admitted evidence.

By the Court.—Judgment reversed.

Not recommended for publication in the official reports.

